SUPREME COURT, U. S.
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No. 71-748

In the Supreme Court of the United States

OCTOBER TERM, 1971

MORTON PAUL KANE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Southern District of Florida, petitioner and one Martin Sklaroff were convicted of having used interstate facilities to carry on an illegal gambling business, in violation of 18 U.S.C. 1952, and of having conspired to violate that statute and 18 U.S.C. 1084 (prohibiting the transmission of wagers by a wire facility in interstate commerce), in violation of 18 U.S.C. 371. Petitioner was given concurrent prison terms of five years on each count. The court of ap-

peals vacated the judgments and sentences and remanded the case for further proceedings in light of *Alderman* v. *United States*, 394 U.S. 165 (Pet. App. 18-19; 409 F. 2d 847). After a hearing on the question whether evidence was tainted by unlawful electronic surveillance, the district court held that the convictions were untainted and reimposed the original judgments and sentences. The court of appeals affirmed (Pet. App. 1-16).

Petitioner contends that the district court improperly restricted the taint hearings by refusing to require production to him of transcriptions of overheard conversations in which he was not shown to have participated but in which the identity of all participants was not known. Instead these overhearings were examined by the trial court *in camera*.[1] This contention is thoroughly answered in the opinion below which correctly points out that the taint hearing was conducted in accord with the requirements of *Alderman* v. *United States*, *supra*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.

[1] Sklaroff raises this same contention, among others, in his petition for a writ of certiorari, No. 71-724, to which we have filed a response.

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